

REMARKS

Applicants appreciate the Examiner's thorough consideration provided in the present application. Claims 1-7 and 15 are currently pending in the instant application. Claims 1 and 6 have been amended. Claims 8-14 have been cancelled without prejudice or disclaimer to the subject matter contained therein, i.e., claims 8-14 are directed toward subject matter withdrawn from further consideration by the Examiner. Claim 1 is independent. Reconsideration of the present application is earnestly solicited.

Applicants' representative has contacted the Examiner to conduct a personal interview discussing the prior art rejections based upon the Birkenfeld reference. The Examiner is requested to contact the undersigned via telephone in the Washington, DC area prior to mailing any response in the event that the Examiner is unable to conduct the personal interview.

Reasons for Entry of Amendment

As discussed in greater detail hereinafter, Applicants respectfully submit that the rejections under 35 U.S.C. §§ 102 and 103 are improper and should be withdrawn. If the present application is not passed to Issue, Applicants submit

that the finality of the Final Office Action mailed on September 24, 2003 should be withdrawn.

In accordance with the requirements of 37 CFR 1.116, Applicants respectfully request entry and consideration of the foregoing amendments as they remove issues for appeal (remove informalities and cancel claims) and place the current application in a condition for allowance.

Election/Restrictions

The Examiner has required the cancellation of non-elected claims 8-14 since these claims have been finally restricted by the Examiner and/or these claims are not dependent from a generic, elected claim. In order to expedite the prosecution of the present application, claims 8-14 have been cancelled. However, Applicants reserve the right to pursue a timely filed divisional application directed toward the non-elected subject matter of claims 8-14.

Claim Rejections Under 35 U.S.C. § 112

Applicants appreciate the Examiner's assistance in identifying potential informalities with the claims. Specifically, claim 6 has been rejected due to the

presence of potential informalities with the claims. This rejection is respectfully traversed.

In light of the foregoing amendments to the claims, Applicants respectfully submit that these rejections have been obviated and/or rendered moot. However, Applicants respectfully submit that the foregoing amendments have been made to merely clarify the claimed invention.

Specifically, amended claim 6 clearly states that the "foil hood or band is held on said gripper means during an end phase of said pulling over." Accordingly, without conceding the propriety of the Examiner's rejections, but merely to timely advance the prosecution of the application, Applicants have incorporated the changes recommended by the Examiner. Applicants submit that the requested changes do not appear to either raise a substantial question of the patentability of the claimed invention nor do they narrow the scope of the claimed invention.

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 2, 5-7 and 15 stand rejected under 35 USC 102(b) as being anticipated by Birkenfeld (DE 4307287). This rejection is respectfully traversed.

In light of the foregoing amendments to the claims, Applicants respectfully submit that all of the rejections have been obviated and/or rendered moot. Without conceding the propriety of the Examiner's rejection, but merely to expedite the prosecution of the present application, Applicants have amended claim 1 to clarify the claimed invention for the benefit of the Examiner. Accordingly, this rejection has been rendered moot.

Applicants submit that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention. For example, with respect to claim 1, the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: "tenterring said reefed foil hood or band stock, respectively, *in essentially a horizontal direction by movement of said gripper means* such that said tentered opening of said foil hood or band stock, respectively, is larger than the contour of said stack of goods to be packed and wherein said foil hood or band stock, respectively, is expanded in essentially a horizontal direction; *pulling-over of said foil hood or band stock, respectively, over said stack of goods by the essentially vertical movement of said lifting frame*, wherein said foil hood or band stock, respectively, *is pulled-off from said gripper means and is expanded in essentially*

a vertical direction; controlling the tension of said foil hood or band stock, respectively, during tentering in essentially a horizontal direction above the upper side of said stack of goods by controlled rolling down of the foil hood or band stock from said gripper means.” (Emphasis added) Accordingly, this rejection should be withdrawn.

Applicants submit that a thorough review of the present application will indicate that the gripper means (see elements 9, 10, 11 in FIGs. 2A-2F to better understand the following discussion) for controlling the tension of the foil hood is in contact with the rolls (element 10), i.e., the rolls 10 are in contact with the foil hood during the tentering process above the stack of goods that are to be packed. Specifically, Applicants have identified a problem with the background art that has been heretofore unidentified in the prior art of record. Further, Applicants have identified a unique solution to a problem that does not appear to be art-recognized in the prior art of record. Accordingly, this rejection appears improper.

In the claimed invention, the tension of the foil in the region of the foil at the ends of the gripper device (element 8) is controlled to avoid overstretching. For example, Specifically, the claimed invention is aimed at avoiding the problem of overstretching the foil in the end region of the gripper means during

tentering of the foil hood above the stack of goods to be packed. This is necessary to avoid any damage to the foil in the end regions that experience the highest tension as they are stretched in the horizontal direction and held by the gripper device. In Birkenfeld, this problem is evident but is not discussed or even recognized, i.e., Birkenfeld is still susceptible to this problem that has heretofore only been identified by Applicants.

Since processes such as Birkenfeld do not include rolls in contact with the foil/gripper means during tentering, the problematic overstretching discovered by Applicants is still going to occur in this type of process. When the foil hood is pulled off the alleged gripper means of Birkenfeld, an angle of more than 90 degrees is created between the gripper means and the foil hood. Therefore, the tension occurring while pulling off the foil hood during the vertical and horizontal movement of the gripper means in the present invention is significantly lower since the angle created between the rolls and the foil hood/gripper means is less than or equal to 90 degrees, e.g., the rolls are in contact with the gripper means and the foil hood.

As to the dependent claims, Applicants respectfully submit that these claims are allowable due to their dependence upon an allowable independent claim, as well as for additional limitations provided by these claims.

Claim Rejections Under 35 U.S.C. § 103

Claims 3 and 4 stand rejected under 35 USC 103(a) as being unpatentable over Birkenfeld (DE 4307287). This rejection is respectfully traversed.

In light of the foregoing amendments to claim 1, this rejection has been obviated and/or rendered moot. As discussed hereinabove, Applicants submit that the prior art of record fails to teach or suggest all of the features of independent claim 1. Accordingly, the rejection to claims 3 and 4 is improper and should be withdrawn.

As discussed in greater detail hereinabove, since processes such as Birkenfeld do not include rolls in contact with the foil/gripper means during tenting, the problematic overstretching discovered by Applicants is still going to occur in this type of process. When the foil hood is pulled off the alleged gripper means of Birkenfeld, an angle of more than 90 degrees is created between the gripper means and the foil hood. Therefore, the tension occurring while pulling off the foil hood during the vertical and horizontal movement of the gripper means in the present invention is significantly lower since the angle created between the rolls and the foil hood/gripper means is less than or equal

to 90 degrees, e.g., the rolls are in contact with the gripper means and the foil hood.

Therefore, the unique controls of the roller speed versus the speed of the lifting frame is clearly not taught or suggested by this reference. Therefore, Applicants submit these claims are patentable for the additional features provided therein.

In accordance with the above discussion of the patents relied upon by the Examiner, Applicants respectfully submit that these documents, either in combination together or standing alone, fail to teach or suggest the invention as is set forth by the claims of the instant application.

Accordingly, reconsideration and withdrawal of the claim rejection are respectfully requested. Moreover, the Applicants respectfully submit that the instant application is in a condition for allowance.

CONCLUSION

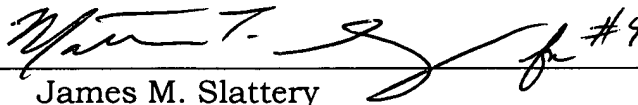

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but rather to merely show the state-of-the-art, no further comments are necessary with respect thereto.

Applicants respectfully petition under the provisions of 37 C.F.R. § 1.136(a) and § 1.17 for a three-month extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of **\$950.00** is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #47,074
James M. Slattery
 Reg. No. 28,380


JMS/MTS/cl

P. O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000